

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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WILLIAM J. LOFINK, JR.,

Petitioner,

Civil Action No.

9:14-CV-0082 (MAD/DEP)

v.

ROBERT MACCARONE,

Respondent.

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APPEARANCES:

OF COUNSEL:

FOR PETITIONER

WILLIAM J. LOFINK, JR.  
Petitioner, *pro se*  
74 Arch Street  
Green Island, NY 12183

FOR RESPONDENT:

HON. ERIC T. SCHNEIDERMAN  
New York State Attorney General  
The Capitol  
Albany, NY 12224

LISA E. FLEISCHMANN, ESQ.  
Assistant Attorney General

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

## AMENDED REPORT AND RECOMMENDATION<sup>1</sup>

On January 27, 2014, *pro se* petitioner William K. Lofink, Jr., a state probationer, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Dkt. No. 1. In the petition, Lofink asserted that certain conditions of his probation, imposed following a 2011 conviction in Albany County Court for offering a false instrument for filing, were unconstitutional. *See generally id.* In response, respondent contended that the petition is barred by the governing statute of limitations. *See generally* Dkt. No. 5.

On October 23, 2014, I issued a report to the assigned district judge recommending the petition be dismissed as untimely. Dkt. No. 8. Since the issuance of that report, however, the court has been informed that, regrettably, petitioner died on May 3, 2014. Dkt. No. 11-1 at 1. Because petitioner is no longer "in custody" as required by 28 U.S.C. 2241(c), I recommend that the petition for a writ of habeas corpus be dismissed as moot. *See Zaker v. Artus*, No. 04-CV-0886, 2007 WL 1521621, at \*1 (W.D.N.Y. May 22, 2007) ("Because petitioner's death means that there is no relief that this Court can grant him, his petition for a writ of habeas corpus has been rendered moot." (citation omitted)); *see also Rivera v.*

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<sup>1</sup> This amended report and recommendation is intended to supersede, in all respects, my earlier report issued on October 23, 2014, which is hereby withdrawn.

*Pearlman*, No. 02-CV-2399, 2004 WL 533333, at \*1 (S.D.N.Y. Mar. 16, 2004).

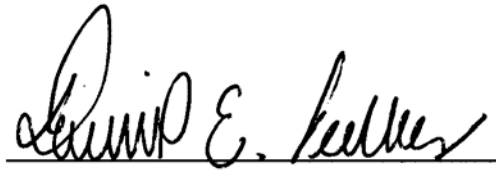
Accordingly, it is respectfully

RECOMMENDED that the petition in this matter be DISMISSED as moot.

NOTICE: Pursuant to 28 U.S.C. § 636(b)(1), the parties may lodge written objections to the foregoing report. Such objections must be filed with the clerk of the court within FOURTEEN days of service of this report. FAILURE TO SO OBJECT TO THIS REPORT WILL PRECLUDE APPELLATE REVIEW. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72; *Roldan v. Racette*, 984 F.2d 85 (2d Cir. 1993).

It is hereby ORDERED that the clerk of the court serve a copy of this report and recommendation upon the parties in accordance with this court's local rules.

Dated: November 12, 2014  
Syracuse, New York

  
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David E. Peebles  
U.S. Magistrate Judge